

1 beginning. So, that is why we are here, Your Honor.

2 THE COURT: All right. Thank you, sir. Mr. Revell?

3 MR. REVELL: Your Honor, I think the defendant's motion
4 is kin to the old proverbial wolf in sheep's clothing. They
5 are asking for a temporary restraining order, interlocutory
6 injunction, to really stop the case. And if you -- as
7 counsel has freely admitted repeatedly here today, he's
8 interested in (1) building a record, and (2) getting out
9 from and away from the rulings that this court has already
10 made in this case.

11 So, if you look at the substance of the present motion
12 it's one of two -- it's one of three things. I think it's
13 part of the reconsideration of the motion for summary
14 judgment, because it restates many of those arguments. It's
15 either a motion to dismiss for lack of subject matter
16 jurisdiction, or it's -- and I think it's really a motion
17 for a protective order so that they would not have to
18 undergo discovery.

19 Counsel acknowledged that they raised this before Judge
20 Fleming. And, Your Honor, this is the reply brief. They
21 filed a motion for summary judgment on grounds that included
22 this, and on February the 11th -- as I understand it, Judge,
23 there was a hearing on January 20th before Judge Fleming on
24 the defendant's motion for summary judgment and then
25 supplemental briefs were filed. And this brief that I've

1 handed you was filed on February 11th. And if you turn back
2 to page 14, under paragraph number "E" it says, this court
3 lacks subject matter jurisdiction over challenges to the
4 FCC's authority to issues rules and orders. The exclusive
5 method for challenging the FCC's promulgation of rules and
6 orders under the TCPA is to appeal to United States Court of
7 Appeals. That's at page 14.

8 And they go on, and I've highlighted for Your Honor the
9 argument, the very argument we just heard for one hour, that
10 the exclusive method for challenging the FCC's rules under
11 the Telephone Communications Act is to petition the FCC and
12 then appeal to the proper United States Court of Appeals.
13 And all the same statutes are cited, some of the same cases
14 are cited. And rolling over the next page, 15, this Court
15 therefore lacks subject matter jurisdiction to overturn
16 these rules and must abide by the reports and orders of the
17 FCC unless nullified by the proper authority. That's the
18 very argument we just heard.

19 Now, that was before Judge Fleming and Judge Fleming
20 entered his order denying the motion for summary judgment.
21 And that was entered, when? On March --

22 MR. BROWNSTEIN: 24th.

23 MR. REVELL: March the 24th. Defendant says they're --
24 the first thing they do was sought a certificate of
25 immediate review of that order; they failed to get one.

1 So the next avenue is to file a motion for reconsideration
2 of Judge Fleming's order, which they did. And that is set
3 for March -- excuse me, May 10. That motion for
4 reconsideration of the denial of summary judgment is set for
5 May 10.

6 Now, in the application today, again counsel is replete
7 and Staples, I should say, is replete in the very
8 application that's before the Court for TRO back on page 7.
9 In paragraph 12 he says, once Verdery challenged the
10 validity of the FCC's rules and orders, the defendant
11 alerted the trial court in oral argument and in its reply
12 brief that the Superior Court of Richmond County lacks
13 subject matter jurisdiction to consider the validity of
14 these FCC rules and orders at issue, citing his brief that I
15 just handed you.

16 And then on the next page he goes on in paragraph 14,
17 on page 8 of that current application, paragraph 14 says,
18 the trial court in Richmond County, Judge Fleming, denied
19 the motion for summary judgment and did not dismiss the case
20 against defendants, despite the fact of the established
21 business relationship, or (2) the exclusive subject matter
22 jurisdiction over the validity of the FCC orders rests
23 exclusively in the federal court of appeals. So that --
24 clearly they have acknowledged it was raised before Judge
25 Fleming, properly raised before Judge Fleming, and Judge

1 Fleming didn't buy it. He did not grant summary judgment.
2 He did not dismiss their case.

3 And I think it's particularly telling when counsel
4 filed this application and contacted me about it, my first
5 reaction was, well, that's part of the motion for
6 reconsideration and I have no objection if it's set down and
7 added to the hearing on May 10, even though that was shorter
8 than our time. Surprisingly, he didn't want Judge Fleming
9 to hear this. Instead, he wants another judge to hear this.
10 The very same argument presented to Judge Fleming and
11 rejected by Judge Fleming should be part of the motion for
12 reconsideration, should be reheard by Judge Fleming on May
13 10. And I submit to you that's what we're about here.
14 We're about a shell game of avoiding the rulings of the
15 court, seeking another judge to address the precise same
16 question.

17 So if it was raised before Judge Fleming, and I think
18 it's pretty clear that it was, he denied it. If counsel
19 wants to take the position, well, that wasn't ruled upon
20 by Judge Fleming, he has not decided it therefore this is
21 a first pass for the trial court to look at this
22 jurisdictional question, he's waived that opportunity.
23 Because by defending on the merits and filing a motion for
24 summary judgment on the merits, you waive any jurisdictional
25 defense you may have. And that's under *Hodge vs. Howes* in

1 Georgia Court of Appeals 260 at 107.

2 In that case, Hodge moved for summary judgment on the
3 merits without reasserting or reserving the jurisdictional
4 objections made in his answer. And they cite the *Hoffman*
5 case, we found that the defendant, who moved for summary
6 judgment without reasserting the affirmative defense of lack
7 of venue, had waived that defense. We can discern of no
8 reason why moving for summary judgment without failing to
9 reserve or reassert the affirmative defense of lack of
10 personal jurisdiction should be treated differently.

11 So, if he wants to contend it wasn't raised before
12 Fleming and hasn't been decided adverse to him, he's waived
13 that opportunity by going to defend on the merits and filing
14 summary judgment. But not only in the supplemental brief
15 but in the very application submitted to you this morning
16 for TRO, he admits this juri- -- this exact same
17 jurisdictional question was raised before Judge Fleming and
18 rejected by Judge Fleming. So we don't think it's anything
19 but a end run. And frankly, it's not even cleverly
20 disguised, when he comes in and admits he's trying to build
21 a record and when he tries to say he wants to get to the
22 court of appeals.

23 And let me talk about the discovery, because I take a
24 little umbrage with counsel's characterization. We had a
25 discovery dispute and Judge Overstreet had a hearing. And

1 it was precisely what we're talking, doing class discovery.
2 And we went to that hearing and Judge Overstreet -- in fact,
3 counsel at that hearing essentially acknowledged that he --
4 that what we were seeking in class discovery was not a
5 fishing expedition, that it was reasonable. And he
6 consented not only to me privately, but in open court before
7 Judge Overstreet that he didn't have any strong valid
8 objections to the discovery we sought. He was concerned
9 about the timing, because he didn't want us to proceed with
10 discovery while summary judgment was pending. And we agreed
11 to that, Your Honor. We said we will not proceed with
12 discovery so long as the motion for summary judgment is
13 undecided. But once it is decided, our intention is to
14 proceed with this class discovery. Secondly, we agreed to
15 his request for a confidentiality order. That was presented
16 to Judge Overstreet. And so the only bone of contention was
17 the timing, but the substance, and if you look at page 2, on
18 a 30(b)(6) deposition, these are the subject matters that
19 Judge Overstreet has ruled that we can go into for purposes
20 of discover, if, if and only if, summary judgment is denied.

21 Now, I don't think as a matter of -- I think as a
22 matter of law you can conclude that's not a fishing
23 expedition. If the court has set the parameters for our
24 discovery, I resent the fact that it's considered a fishing
25 expedition, particularly when counsel himself acknowledged

1 that these were reasonable requests and the protective order
2 gave them the protection they needed. The timing, I can
3 understand they don't like for us to -- they don't ever want
4 us to go. And the harder they fight the more I wonder what
5 they're trying to hide from us, and that's what this is
6 about.

7 And so I think before we even get to the substance,
8 Your Honor, of what he's -- of his argument and all the
9 attachments that we went through, I think there's ample
10 grounds here for you to deny the temporary restraining order
11 at this point and direct them to, one, take this up with
12 Judge Fleming on May the 10th. You've already admitted you
13 had it before him before.

14 And I've never seen anybody seek an injunction to stop
15 a case to prevent discovery. If they wanted to make an
16 argument with Judge Overstreet about why we shouldn't be
17 allowed to proceed with discovery, there was an opportunity
18 for them to make that argument.

19 And it's very interesting and I think very telling that
20 they didn't make the argument today about lack of subject
21 matter jurisdiction to Judge Overstreet. That argument
22 wasn't made. I guess they thought Judge Fleming was going
23 to agree with them, because it was before Judge Fleming when
24 we argued it before Judge Overstreet because Judge Fleming
25 had not yet decided summary judgment.

1 And you can look in the body of the order, it
2 contemplates, in the third paragraph, this order
3 contemplates the need for additional discovery on class
4 certification in the event defendant's motion for summary
5 judgment is denied. If summary judgment is denied,
6 plaintiff shall be permitted to undertake discovery. And
7 then he lays out the seven or eight -- actually ten subject
8 matters that we're limited to in the discovery. So it's no
9 fishing expedition.

10 So there wasn't any jurisdictional argument made then.
11 The jurisdictional argument was made to Judge Fleming and it
12 should continue to be made to Judge Fleming. And you're
13 being asked to really overrule Judge Fleming, because if you
14 grant his relief you have overruled Judge Fleming.

15 **THE COURT:** My question to Mr. Lefkow was going to be
16 if I grant the TRO, where does that put the motion for
17 reconsideration?

18 **MR. LEFKOW:** I have no -- the reconsideration can go
19 forward. This order -- this Court would not conflict with
20 Judge Fleming in the slightest.

21 **THE COURT:** If I grant the TRO?

22 **MR. LEFKOW:** Yes, Your Honor, and let me tell you how.
23 And even if it does, I mean it's a subject matter
24 jurisdiction which every court has the responsibility to
25 address. And again -- well, we'll get to that in a second.

1 This would not conflict with Judge Fleming's ruling.
2 Judge Fleming is being asked on reconsideration to rule
3 whether a case which has been, the relevant portion has --
4 which has been withdrawn supports reconsideration of the
5 motion for summary judgment. And we filed that right after
6 we got that decision essentially foreclosing their cause of
7 action. And then mysteriously, you know, two paragraphs of
8 that decision were withdrawn on April 13th by Judge Adams.
9 And so immediately we filed everything that we could and we
10 wanted it to be heard as early as possible when we were
11 prepared to do it. We had to prepare it and then we had to
12 be ready to argue it and we -- so we asked for a stay of the
13 proceedings besides the motion for reconsideration.

14 I think the motion for stay is clear. We do not seek
15 a stay so that the motion for reconsideration can't go
16 forward. That can go forward. But the stay should be in
17 place so that once that reconsideration motion is decided,
18 that we are not bound to produce immediately discovery on --
19 in a case where there is no subject matter jurisdiction.
20 The reason being, because Mr. Revell and I have agreed that
21 because that case came out and essentially foreclosed their
22 cause of action, that upon the decision on the
23 reconsideration motion that the discovery obligations will
24 then accrue. So before it accrues, we want to give the
25 Court every opportunity to stop it.

1 And this is a motion for stay. This is not a motion
2 for -- to dismiss. This is not -- this is not the same
3 motion that was presented to Judge Fleming; although, some
4 of the arguments are the same and the reasons are the same.
5 It is a motion for stay and it is a motion for temporary
6 restraining order to prevent them from going forward with
7 this action until they have followed the correct procedures
8 in front of the FCC.

9 Now, Judge Fleming could dismiss it, and that'll be
10 fine with us. That does not -- that would not conflict.
11 The only thing he could do at that hearing is dismiss it.
12 That would not conflict with entering a stay which comes
13 into effect after his ruling.

14 **THE COURT:** All right. Anything further?

15 **MR. REVELL:** I'm at a loss for that argument, because I
16 cannot imagine when the motion -- when they ask Judge
17 Fleming to dismiss the -- I mean, dismiss on a
18 jurisdictional question is a motion in abatement, not a
19 motion on the merits. And a motion to stay is sort of the
20 and/or, you either dismiss it and/or stay it if you lack
21 subject matter jurisdiction. And their claim is failure to
22 exhaust administrative remedies, so go to the FCC, go to the
23 Eleventh Circuit Court of Appeals.

24 They asked Judge Fleming to do that. They asked Judge
25 Fleming to dismiss it on that basis. So now they come in

1 and say, well, don't dismiss it, Judge Brown, stay it on
2 that same basis. And Judge Fleming has said you have a case
3 that's not going to be dismissed on the merits in summary
4 judgment and it's not going to be dismissed for lack of
5 subject matter jurisdiction. That's Judge Fleming's ruling.

6 And now they come in and -- and if you were to stay it,
7 I can't imagine how those aren't completely contradictory
8 rulings, because Judge Fleming has ruled we can proceed.
9 Judge Overstreet has ruled we can proceed with discovery.
10 And then if you were to buy this bill of goods and say no,
11 you've got to go to the FCC, it's completely contradictory
12 to what Fleming had -- Judge Fleming had before him and
13 rejected. And it's just a -- you've got to see it for what
14 it is. It's trying to create a record, create an appealable
15 order. That's why it's called an interlocutory injunction,
16 they want an appealable order. After Fleming wouldn't give
17 -- Judge Fleming wouldn't give him one and Judge Overstreet
18 wouldn't prevent us from doing the discovery we're entitled
19 to do, they want to appeal that.

20 So that's -- this is their third whack at the same
21 issue that's been rejected by two of our courts. I submit
22 if you reject it likewise, the next hearing low and behold,
23 I bet, will be before Judge Pickett. Surprise, surprise.
24 It's just really hard to --

25 MR. LEFKOW: Or --

1 MR. REVELL: -- hard to see the transparency of their
2 position, particularly when counsel wouldn't agree to let
3 Judge Fleming hear this. We weren't going on discovery,
4 Your Honor. We weren't going on discovery, again, until
5 summary judgment is denied. I told counsel we're not going
6 to go on discovery while reconsideration is pending. So
7 what's the urgency? Why not just make these same arguments
8 again to Judge Fleming?

9 And that's what we suggest you should do, you should
10 refer this matter to Judge Fleming. I'll tell you right now
11 on the record, I'm not going to go seek this discovery
12 before Judge Fleming rules. I have no intentions of doing
13 that. I'd be prevented by Judge Overstreet's order. But
14 I'll tell you and I'll commit to you and counsel, I have no
15 intention of going to seek this discovery that Judge
16 Overstreet has allowed us to get until the motion for
17 summary judgment is finally disposed of. So there's no
18 urgency.

19 I'm encouraged to hear that I'm on the verge of a
20 multibillion dollar verdict. If it's close, I don't see it
21 in the headlights anywhere, so I guess I'm encouraged that
22 maybe they are going to write me a check for a few billion
23 dollars. But I sort of feel like I'm on the front end. I
24 haven't done my basic discovery yet because we've been
25 thwarted in that effort. And that's what Judge Fleming has

1 said we can do and Judge Overstreet has said we can do, and
2 we ask you to respect those rulings and not, by entering an
3 order on a misnomered motion, stop us. That's all I'm
4 asking you to do, and I think it should be referred.

5 THE COURT: All right.

6 MR. LEFKOW: May I address something, Your Honor?

7 THE COURT: Sure.

8 MR. LEFKOW: Just again, I need to refer the Court to
9 that *First United Church vs. Udofia* case. Subject matter
10 jurisdiction may not be waived by the parties or the court.
11 Even if the parties don't raise it or however they raise it
12 -- I could raise it by howling at the moon. It can be
13 raised any way, any how. And I have presented it to a
14 court, which by the rules of this court there is no judge
15 assigned. And the reason that we are in this court today is
16 that I wanted a hearing this week and Judge Fleming was not
17 available. I do not want to wait until we are on the verge
18 of having to let the enemies into the gates before we are
19 given some relief from a case where there is no subject
20 matter jurisdiction.

21 I have created a record that I've done everything
22 possible for all of these courts. I think giving an order
23 of referral would be exercising jurisdiction over this case,
24 Your Honor. And I believe that would be improper, if the
25 Court finds that there is no subject matter jurisdiction,

1 because that is a threshold matter that every court is
2 obligated to address. So, I would ask the Court to stay the
3 action.

4 If the Court finds it necessary to dismiss the action,
5 but that can be Judge Fleming's decision, although he's not
6 got subject matter jurisdiction before it -- before him on
7 May 10th. So I think something's got to be done before
8 we're instantly obligated to provide class discovery,
9 regardless of whether it's nice class discovery or, you
10 know, onerous class discovery. This is a case the Court
11 can't exercise jurisdiction over.

12 **THE COURT:** All right.

13 **MR. REVELL:** Your Honor, finally, I would just remind
14 the Court of what it obviously already knows, is the
15 standard for granting a TRO, as you know, the substantial
16 likelihood it'll pervade on the merits, irreparable harm,
17 threatened to one side versus the other, and the public
18 interest. Now, I'm really at a loss to see the irreparable
19 harm today. We're not going anywhere next week or we're not
20 going anywhere until Judge Fleming rules.

21 And the last time I checked, engaging in discovery is
22 not irreparable harm, particularly when it's by court order.
23 How could that be irreparable harm, being forced to
24 participate in discovery? The enemy, as we're now for the
25 first time called, who is engaging in what we think is

1 reasonable discovery, what counsel himself admitted was
2 reasonable discovery under the allegations in the complaint,
3 what Judge Overstreet found to be reasonable discovery, is
4 now suddenly irreparable harm. I just don't think the --
5 those basic criteria for the granting of a TRO are even
6 close to being met here.

7 And I don't want the Court -- I don't want to do two
8 things. One, I don't want to bore the Court with going
9 through an hour's presentation rebutting those cases because
10 I don't think you need to get there, but we have a response.
11 We don't think that on the merits of all this going to the
12 FCC and all that, my silence I don't want to be construed to
13 be acquiescence in that argument, because we strongly
14 contest and disagree with the contention that on the merits
15 we have to go to the FCC anyway. And we'll have that in our
16 brief, or if you want to hear about that today we are
17 prepared to. But I don't think you even need to get that
18 far for the purposes of today's TRO.

19 **THE COURT:** All right. Well, thank you for your
20 arguments in the case. I think they are well made and
21 reasonable, but I don't think it's an appropriate case for
22 me to procedurally grant a TRO in the case. I think that
23 the arguments that the defendants make may be in part
24 considered by what is already pending before Judge Fleming.
25 And I don't think it appropriate for me to stay the

1 proceedings at this time, so I'll deny your request for a
2 TRO.

3 MR. REVELL: Shall I prepare an order, Your Honor?

4 THE COURT: Yes.

5 MR. REVELL: All right.

6 MR. LEFKOW: Your Honor, would that also mean that Your
7 Honor is inclined to deny the interlocutory injunction?

8 THE COURT: Yes.

9 MR. LEFKOW: Okay. And would that also mean that Your
10 Honor is inclined to deny the motion for stay?

11 THE COURT: I'm inclined to. Today we considered the
12 TRO, just as I indicated at the outset of the hearing, but
13 my inclination in response to your question would be to deny
14 those.

15 MR. LEFKOW: May I present --

16 MR. REVELL: Your Honor, I'm going to object to counsel
17 -- I'm sure he's got an order saying the interlocutory
18 injunction, having come on for hearing, is hereby denied.
19 As I understand, we're here on a temporary restraining order
20 and the interlocutory injunction motion will be set after
21 our response time.

22 THE COURT: That is what I indicated at the outset of
23 the hearing.

24 MR. REVELL: All right.

25 THE COURT: That we were going to consider the TRO

1 today and that's what we've considered and that's what I've
2 denied and nothing more.

3 MR. LEFKOW: So Your Honor will not grant -- even
4 though Your Honor is inclined not to grant an interlocutory
5 injunction after hearing all of my arguments, which I don't
6 think I can make any better, you will not grant an interloc-
7 -- a denial of an interlocutory injunction which does no
8 prejudice to them to have --

9 MR. REVELL: Well, we're --

10 THE COURT: No. Because I said at the outset of the
11 hearing we were going to consider the TRO and that's what
12 we've considered. Now, you asked me if I was inclined to do
13 that and I responded to that by saying that I was, but we
14 didn't consider that today.

15 MR. LEFKOW: I would -- I think it aggrieves me more
16 than anybody if you're going to deny it, and I would
17 consent to, you know, whatever reply time I've got being
18 shortened.

19 MR. REVELL: We would ask for a maximum of thirty days
20 to reply, Your Honor.

21 THE COURT: All right. Well --

22 MR. REVELL: And then we'll set a hearing after that.

23 THE COURT: Certainly I think you'd be entitled to
24 that, so we'll just consider the TRO today.

25 MR. LEFKOW: Would Your Honor -- I've prepared an order

1 denying the TRO, I believe.

2 [Pause while counsel reviews files.]

3 MR. LEFKOW: Well, Your Honor, needless to say it's --
4 suffice it to say it's an oral ruling. Would Your Honor be
5 inclined to grant a certificate of immediate review on the
6 TRO?

7 THE COURT: No, I wouldn't. Prepare the order, Mr.
8 Revell.

9 MR. REVELL: All right, sir.

10 THE COURT: Submit it to Mr. Lefkow for his review and
11 then to the Court.

12 MR. REVELL: All right, sir.

13 MR. BROWNSTEIN: Thank you, Your Honor.

14 MR. LITTLE: Thank you, Judge.

15 [Hearing concluded at 12:23 p.m.]

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CERTIFICATE OF COURT REPORTER

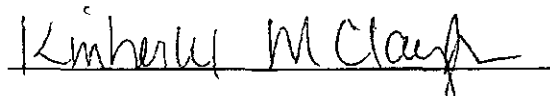
STATE OF GEORGIA)

COUNTY OF RICHMOND)

I hereby certify that the foregoing transcript consisting of (47) forty-seven pages is a true, correct, and complete transcript of the proceeding held before me; that said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not kin or counsel to the parties in the case, am not in the regular employ of counsel or said parties, nor am I otherwise interested in the result of said case.

This the 28th day of April, 2004.



KIMBERLY M. CLAYTON, CCR, CVR

OFFICIAL COURT REPORTER

GEORGIA CERTIFICATE NO. B-1605

EXHIBIT 11

ORDER

IN THE SUPERIOR COURT OF RICHMOND COUNTY
STATE OF GEORGIA

CLERK OF SUPERIOR STATE

04 APR -5 PM 3:59

MATTISON R. VERDERY, C.P.A, P.C.,
individually and on behalf of all persons
and entities similarly situated,

Plaintiffs,

v.

STAPLES, INC. and QUICK LINK
INFORMATION SERVICES, LLC,

Defendants.

CLERK OF SUPERIOR COURT
RICHMOND COUNTY, GA.

Civil Action File No.
2003-RCCV-728

ORDER COMPELLING DISCOVERY

Presently before the Court are Plaintiff's Motion to Compel Discovery and Plaintiff's Motion to Enlarge the Discovery Period. A hearing was held on March 18, 2004 where Plaintiff narrowed his motion to compel for present purposes so as to limit the requested discovery to subject matters related to class certification. After considering the record and argument of counsel the Court hereby **GRANTS** Plaintiff's Motion to Compel as herein provided.

Plaintiff shall not undertake any depositions contemplated by this Order until such time as the Court renders its decision on Defendants' pending Motion for Summary Judgment. That Motion has been fully briefed and argued orally by the parties

This Order contemplates the need for additional discovery on class certification issues in the event Defendants' Motion for Summary Judgment is denied. If Summary Judgment is denied Plaintiff shall be permitted to undertake discovery on the matters

related to class certification set forth below pursuant to O.C.G.A. § 9-11-30 (b) (6).¹ In such event, Defendants shall produce for deposition one or more officers, directors, managing agents, employees or other persons with knowledge of the following subject matters:

1 The creation, development, transmission and receipt of all Staples fax advertisements

2 How the database used to transmit Staples fax advertisements was created, developed and maintained.

3. The number of Staples fax advertisements transmitted within four (4) years of the filing of Plaintiff's Complaint.

4 The number of Staples fax advertisements transmitted to recipients in the State of Georgia within four (4) years of the filing of Plaintiff's Complaint.

5 Any agreements between Staples and Quick Link that relate in any way to the Staples fax advertisements.

6 The development and maintenance of any "suppression list" or similar documents containing requests by individuals or entities to be removed from any lists of future intended recipients of Staples fax advertisements.

7 The existence and current status of any other lawsuits presently pending or threatened against one or both Defendants that contain claims for violations of the Telephone Consumer Protection Act or any other claims allegedly resulting from transmission of Staples fax advertisements.

¹ The Court notes that Plaintiff has filed Notices of Depositions under O.C.G.A. § 9-11-30(b) (6) for representatives of Staples, Inc. and Quick Link Information Services, Inc. for April 19-20, 2004. As stated herein, those depositions may or may not be taken on those dates, depending on the disposition of Defendants' Motion for Summary Judgment

8. The existence of all insurance policies providing any kind of liability insurance for Defendants, including the terms and conditions of all such policies and any claims made under such policies. Defendants shall produce copies of all policies that provide any kind of liability coverage for them

9. The collection, compilation and use of all information, including any form of written documentation, reflecting or relating to any prior express invitation or permission given by any intended recipient of Staples fax advertisements.

10 What Defendants knew about the TCPA and the rules and regulations promulgated thereunder at the time the decision was made to send Staples advertisements by fax.


The Plaintiff's Rule 30(b) (6) Deposition Notices filed on March 5, 2004 are hereby modified and restricted to the foregoing subject matters that relate to class certification. In addition to producing individuals knowledgeable about the foregoing subject matters, Defendants shall produce all non-privileged documents that relate to the same; provided, however, that Defendants shall not be required to produce the specific personal information such as names, addresses, fax numbers, and transaction histories contained in the database(s) used to send Staples fax advertisements unless in the future the Court orders otherwise. Until such time, a general description of the categories of information currently available on such database(s) will suffice.

The production of any documents on the foregoing subject matters shall be subject to and governed by the November 3, 2003 Confidentiality Agreement between the parties. That Agreement is hereby adopted as part of this Order and the parties are ordered to abide by such Agreement, provided that any designation of confidentiality is


made in good faith, and may be subject to challenge by motion of the other party. Until such time as the Court orders otherwise, all documents labeled as "CONFIDENTIAL" must be filed under seal unless otherwise agreed by the parties in writing. To the extent any such confidential information or documents were made a part of the record as part of Plaintiff's Motion for Class Certification and/or Amended Complaint such information and/or documents shall be sealed by the Clerk until further order of the Court. Plaintiff may, but is not required to, refile additional copies of the pleadings referred to above with the documents marked "CONFIDENTIAL" fully redacted by Plaintiff and with any and all confidential information obtained from such documents also fully redacted by Plaintiff.


The discovery period is hereby extended for an additional six (6) from March 5, 2004 to and including September 6, 2004.

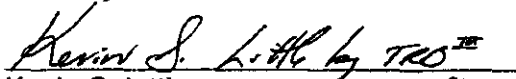
So Ordered this 25th day of March, 2004.


J. Carlisle Overstreet
Judge of Superior Court
Augusta Judicial Circuit

Presented to by:


Harry D. Revell *by TROth w/ permission*
State Bar No 601331
Attorney for Plaintiff


Jay D. Brownstein *by TROth w/ permission*
Georgia Bar No. 002590
Attorney for Plaintiff

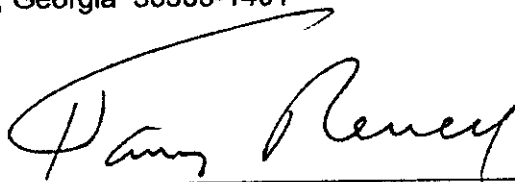

Kevin S. Little *by TROth w/ permission*
Georgia Bar No. 454225
Attorney for Plaintiff

Certificate of Service

This is to certify that I have served the within and foregoing upon the following by
U. S. Mail prior to filing:

Robert B. Hocutt, Esq.
Mark D. Lefkow, Esq.
Null & Miller, LLP
Suite 1500, North Tower
235 Peachtree Street, NE
Atlanta, Georgia 30303-1401

This 5th day of April, 2004.


HARRY D. REVELL

CERTIFICATE OF SERVICE

I, Jennifer Short, hereby certify that on this 3rd day of May 2004, a true and correct copy of the foregoing Petition for Expedited Declaratory Ruling and for a Cease and Desist Order was sent via U.S. first class mail, postage prepaid, or by hand, to the following:

* Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, SW
Room 8-B201
Washington, DC 20554

* Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-B115
Washington, DC 20554

* Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-A302
Washington, DC 20554

* Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-A204
Washington, DC 20554

* Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW
Room 8-C302
Washington, DC 20554

* Marlene H. Dortch
Secretary
Federal Communications
Commission
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

* John A. Rogovin, General Counsel
Office of the General Counsel
Federal Communications
Commission
445 12th Street, SW
Washington, DC 20554

* Christopher Libertelli
Senior Legal Advisor
Office of Chairman Michael Powell
Federal Communications
Commission
445 12th Street, SW
Washington, DC 20554

* Matthew Brill
Senior Legal Advisor
Office of Commissioner Abernathy
Federal Communications
Commission
445 12th Street, SW
Washington, DC 20554

* Jordan Goldstein
Senior Legal Advisor
Office of Commissioner Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

* Daniel Gonzalez
Senior Legal Advisor
Office of Commissioner Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

* Barry Ohlson
Senior Legal Advisor
Office of Commissioner Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

* K. Dane Snowden
Chief
Consumer & Governmental Affairs Bureau
Federal Communications Commission
445 12th St., S.W.
Room 5-C755
Washington, DC 20554

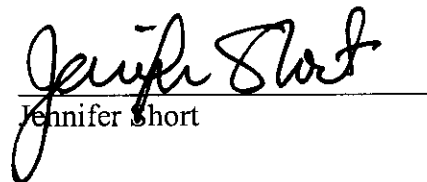
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* By hand


Jennifer Short